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UNCLAS SECTION 01 OF 02 TEGUCIGALPA 001351

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STATE FOR WHA/CEN, WHA/EPSC, AND EB
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E.O. 12958: N/A

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SUBJECT: PROSECUTORIAL INDISCRETION? HONDURAN PRIVATE
SECTOR VIEWS ON THE PROSECUTORS, OFFICE

REF: A) TEGUCIGALPA 1349

1. (SBU) SUMMARY: In reftel, Post noted the growing pressure for a shake-up at the Public Ministry (home of the Attorney General and his staff of investigators and prosecuting attorneys). Initially driven largely by the revelation that the USG had revoked Deputy Attorney General Yuri Melara,s visa for corruption, there is now increasing clamor for the dismissal of the Attorney General and perhaps his lead prosecutors as well. In reftel, Post expressed its concerns that these calls for mass dismissals might have been spurred by political and economic elites threatened by increasingly aggressive investigations of corruption and organized crime. In this cable we add the private sector,s view that the prosecutors, office is indeed out of control, but that mass firings would likely be counterproductive. End Summary.

2. (SBU) EconChief recently discussed the burgeoning crisis at the Public Ministry (ref A) with three senior businessmen: the president of a bank, the president of an import-export firm, and the government relations director of the major brewery in Honduras. All were pleased at the attention finally being paid to a situation they view as increasingly intolerable. According to the executives, the prosecutors are over-zealous, impatient, and insufficiently schooled in civil law. They have, one businessman said, a mindset that any time a complaint is filed someone should go to jail. Too often, he said, they fail to discriminate between cases with merit and cases that either lack merit or cannot be successfully prosecuted. Others present echoed this sentiment, recounting tales of prosecutors arriving on scene with police in tow, demanding immediate payment of some alleged bill and threatening the accused with arrest if he or she fails to comply. The businessmen saw actions like this as a clear violation of due process, since the accused is afforded little or no opportunity to present his version of the case.

3. (SBU) This tendency is particularly problematic, the brewery executive noted, in civil and administrative cases, which by their nature are complex and often prolonged. His firm, for example, is in the midst of a trademark dispute that has been ongoing since August 2004. His firm, accused of infringement, successfully defended its right before the Ministry of Industry, but lost on appeal to the Intellectual Property Institute. As is permitted in the law, the brewery then filed a civil court case appealing the Institute,s decision. That case is still pending before the courts and, until a verdict is rendered, the firm is permitted to continue marketing its product. The accusing firm, however, allegedly refused to wait for the verdict and instead filed a complaint with the prosecutor,s office. The prosecutor arrived at the brewery on June 21 with police and representatives of the accusing firm, intending to seize the allegedly infringing product. This apparent violation of due process and presumption of guilt shows, the executive said, that the prosecutors, office does not have the depth of knowledge needed in certain cases, and lacks the restraint to pick appropriate cases and do its homework before acting.

4. (SBU) All present agreed, however, that firing the prosecutors would leave the public with the impression that the political and economic elites had conspired to stymie high-profile corruption and criminal investigations by muzzling the prosecutors, office. The businessmen strongly support active enforcement of the law (After all, the brewery official said, &we also distribute Coca-Cola, and what trademark needs more protection than Coke?8). But all concurred that the &young brats8 (cipotes) in the prosecutors, office are running amok and need to be reined-in. Though none specifically said he would like to see Attorney General Ovidio Navarro dismissed, all laid the blame at his door, agreeing that the prime cause of this problem is his lack of leadership at the Public Ministry. The prosecutors, office, one said, has become &a circus.8

5. (SBU) Comment: In our view, the looming shake-up at the Public Ministry is a complex and dangerous affair. Clearly

there is widespread disaffection for what are viewed as loose-cannons in the prosecutors, office, despite an equally widespread recognition that corruption is hobbling the economy and must be aggressively confronted. The danger is that this growing sense that &something must be done8 could be mis-appropriated by those who benefit from the current corrupt system and used as cover to eviscerate the prosecutors, office and to send a strong message that while immunity may have been eliminated, impunity remains alive and well. Post will continue to press the message with the GOH that, while stronger leadership and increased prosecutorial discretion might be called for at the Public Ministry, we would look unfavorably on any wholesale firings of lead prosecutors in an effort to halt corruption and criminal investigations. End Comment.

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